Remarks

Claims 22-45, 47-56 and 58-63 are pending in the captioned application. The Office Action objected to each of the claims allegedly "because it's still not clear why each claim of the patent/application do or do not correspond to the count."

In general, a "count" means the Board's description of interfering subject matter. 37 C.F.R. §41.201. Also in general, a claim corresponds to a count if it does not define an invention that is patentably distinct from the invention defined by the count. *See e.g. Orikasa v. Oonishi*, 10 U.S.P.Q.2d 1996, 2004 (Comm'r Pat. 1989).

In the latest Request for an Interference in connection with the captioned application on 20 April 2004, applicants indicated why each of the claims in the captioned application and in the two patents (6,239,744 and 6,677,896) corresponded with the count proposed at that time. In general, the reason was that none was patentably distinct from the proposed count. Indeed, most of the claims were verbatim part of the proposed count. This was discussed for each claim individually by number in section III of that 20 April 2004 request for an interference (from the bottom of page 2 to the bottom of page 4 of that request). That discussion identified those claims of the '744 patent and of the '896 patent that were included in the the proposed count (bottom of page 2 to top of page 3). It included a chart showing the correspondence between each claim of the captioned application and a claim of either the '744 patent or the '896 patent (middle of page 3 to top of page 4). It presented the reason why each claim of the '744 patent and of the '896 patent that was not included in the proposed count was, nonetheless, not patentably distinct from the claims included in the proposed count and therefore corresponded to the proposed count (middle to bottom of page 4).

With respect to the pending objection to the claims, correspondence with a count or with a proposed count should not play any part in determining allowability of claims. The claims have previously been identified as allowable. If there is interfering subject matter, then an interference should be declared. If there is no interfering subject matter, then the application should be allowed. If a telephone conference would expedite prosecution of the captioned application, the applicants respectfully request that a telephone call be made to the undersigned

at the below-listed telephone number. The applicants request reconsideration, and either declaration of an interference or a Notice of Allowance.

Respectfully submitted,

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